

Reflections on the 'Re-imagining the Teaching of Criminal Law' Workshop

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It seemed like an age had passed between CEPLER agreeing to fund the workshop I proposed on the topic of 'Re-imagining the teaching of criminal law' and the 17th September 2014. When I originally put forward the case for funding, I stated my case in the following terms:

'As higher education institutions struggle to adapt to the changing demands of fee paying students, the content, aims and outcomes of our modules needs to be the subject of regular review. In core legal subjects, this is particularly important given that we are subject to external regulation. Moreover, as discussions regarding the value of a law degree continue, the issue of 'core' modules is contentious. This is even more pertinent for those who teach criminal law given recent suggestions that the topic ought not to be included as a core module on the LLB. The purpose of this one day seminar is to bring together those who work in a range of higher education institutions with practitioners to consider the place, content and structure of criminal law courses.'

Perhaps I could have been more eloquent, but my belief remains that the changing nature of higher education and the vocation (i.e. the legal profession) to which we are commonly linked demands that we reflect, perhaps more frequently than we are naturally inclined, upon what we do and why. It was with this in mind that the programme for the day was designed. It was a day of two distinct, but at the same time interlinked, halves. Over the course of the day there were five sessions, containing presentations given by Professor Celia Wells, Susi Menis, Ben Henry, Kevin Saunders, Michael Burrows, Claire McGourlay and Ben Fitzpatrick. Below I discuss each of their contributions (some of which can be found as CEPLER working papers).

Socio-legalism in criminal law

It was a huge pleasure (and relief) when Professor Celia Wells agreed to participate in the day. Celia, along with Professor Nicola Lacey, has authored what remains one of a very small handful of criminal law textbooks that deviate from the standard, reasonably dry format. 'Reconstructing Criminal Law' continues to be revised and updated and those who teach criminal law persist with their struggle (aspiration?) to think about how they could use the book as their main course text. It was something that I have myself done, only to receive student feedback that it was inappropriate for their needs because it is a criminology text. In asking Celia to reflect upon the legacy of her previous imaginings, I was well aware of the conservatism of both academics and students faced by those trying to implement a socio-legal approach to criminal law.

It became clear that Celia had faced much the same frustrations as me. She explained that the textbook had originally been conceived of because of a shared belief that 'the general part' of criminal law – that is mens rea, actus reus and causation – was (and is) given disproportionate emphasis in criminal law courses. These concepts, she said, are best understood as elements of

substantive crimes. Moreover, the concentration on 'law' as opposed to understanding the law misleads students about the reality of how law works.

Celia's reflections led us neatly to the discussion of the Birkbeck model for teaching criminal law. Susi Menis explained that at Birkbeck there is an institutional acceptance of a 'critical pedagogy'. In practice this means that students are challenged to view the law through non-conventional devices – perhaps an extract from a novel to force reflection on the theatricality of law, or trial transcripts to understand how law is constructed in practice. Birkbeck takes advantage of the fact that its student body is largely made up of mature students. This means that students bring with them life experiences and perspectives that many 18 -21 year olds are without. Whilst Susi wondered whether their methods would be so effective with a more traditional cohort, other participants who were familiar with younger students suggested that they had much to bring to the kind of approach that Susi had outlined.

Reflections from practice

Any concerns that I might have had that our panel of legal professionals would be completely at odds with Celia and Susi soon dissipated once our third session got under way. This session contained a panel of three criminal legal practitioners. Ben Henry is a solicitor and advocate, Kevin Saunders is a barrister and Michael Burrows is a QC and recorder. Each spoke in turn about their own reflections and frustrations.

Ben and Kevin both highlighted that the reality of practice for them was not one typified by regular engagement with many of the legal issues that are emphasised during most undergraduate criminal law courses. For example, Ben suggested that in day-to-day practice in criminal courts issues of mens rea or actus reus are rarely significant (if raised at all). Similarly, in trial courts, lawyers rarely concern themselves with historical precedents. They highlighted the importance of students having a good understanding of why criminal law exists, an ability to think critically about it, an appreciation of the empirical reality of criminal law and perhaps most importantly (according to Kevin) that they gained a sufficient idea of what 'justice' is so that they know how to answer the 'dinner-table' question, 'how can you defend a murderer?'. They were convinced that the models outlined by Celia and Susi could be effective ways to achieve these goals.

Michael approached the issue somewhat differently. His presentation contained two major pleas. Firstly, that we better equip students with advocacy skills. Secondly, Michael wants there to be an emphasis in criminal law teaching about evidence, procedure and sentencing. This is because, in practice, next to no time is spent deliberating on a point of law as compared to whether evidence is admissible or making submissions as to sentence.

This prompted consideration of the extent to which undergraduate law degrees should have a vocational role, or whether these are specific skills which are best dealt with during postgraduate vocational programmes. This goes to the heart of recent debates considering whether a law degree is really necessary (or indeed an advantage) for those wishing to go into legal practice. The socio-legal approach that dominated the morning speaks to the perspective that law is just one in a catalogue of humanities subjects ripe for purely academic study, irrespective of whether students wish to enter the legal profession or not. There are also different ways in which Michael's suggestions could be implemented – we all want our graduates to possess a range of key transferable skills, one of which must be the ability to give effective oral presentations. These more

general issues of skills and employability are relevant to all undergraduate courses, whatever the topic. We can also provide optional courses that expand on issues such as the admission of evidence, although this somewhat side-steps his view that these topics, rather than substantive criminal law, represent the real core.

Clinical legal education

A focus on employability was central to the undergraduate criminal law curriculum currently being developed by Professor Claire McGourlay. As the result of a school level curriculum review at Sheffield University, Claire is finalising a new approach to teaching undergraduate criminal law. It has clinical legal education as its focus.

Claire has already developed popular and successful clinical legal education opportunities at Sheffield – currently in the form of the Freelaw Legal Clinic and the University of Sheffield Innocence Project. She hoped to use her insights from those experiences to transform a core module. A more theoretical ‘advanced’ module will then be available in later years. The emphasis of Claire’s new module is on skills development, a great deal of effort having gone into designing and integrating skills icons into the course structure. Claire has managed to persuade her institution to create a new learning space for her criminal law course – students will sit around tables in lectures rather than being arranged in the traditional ‘passive’ format.

Making the transition from running small optional clinical modules to designing and delivering a core course based on that approach was clearly challenging. Claire’s presentation made many of us aware of how limited both expertise and resources are for the large scale integration of clinical legal education, especially in research intensive higher education institutions. The approach is clearly very rewarding for many students and is something that we can no longer continue to ignore, as such opportunities are increasingly demanded by undergraduate law students.

The role of criminal law in contemporary legal education

The final session of the day was led by Professor Ben Fitzpatrick. Ben’s blog considering the role of criminal law as a core was the catalyst for the organisation of the workshop.¹ Ben’s presentation brought together many of the themes and issues that had been identified during the day.

Ben started by problematising what ‘criminal law’ actually is, asking whether there is something identifiable and distinctive that brings together all criminal law. Concluding that the contestability of the term was a positive attribute, Ben went on to identify many features that could be included within a criminal syllabus. These include: substantive doctrine, rules of procedure and evidence, philosophy, ethics, punishment and criminal justice policy.

Ben proposed a framework for how a course might be structured so as to acknowledge all of these elements. Achieving this, he hoped, would confirm the importance of understanding criminal law as an essential part of what it means to become a ‘lawyer’. The idea of all of these topics being essential elements of a core criminal law course goes some way to addressing Michael’s concerns regarding the omission of evidence, procedure and sentencing.

Ben’s goals were certainly admirable, but in drawing lines between these elements some wondered whether he was risking reinforcing false divisions between these issues. The presentation thus

¹ <http://benfitzpatrick1.wordpress.com/2013/12/17/should-criminal-law-be-part-of-the-qualifying-law-degree/>

highlighted the impossibility of covering everything in one module, leaving the question as to how one should best make choices. It was a very thought-provoking way to close the day.

Final thoughts

When this event was being imagined, I wanted to be able to bring together a range of interested people from an assortment of backgrounds and perspectives to discuss our mutual interest in the teaching of criminal law. I hoped that I, and colleagues, would be provoked to 're-imagine' our own teaching of criminal law. I can only speak for myself in saying that it gave me much to think about.

At the start of the day, Celia lamented that little had changed and the debates remained much the same. I hope that we have finally taken a step towards moving the debate forward a little.